



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

MEMORANDUM

JOHN W. McCONNELL
COUNSEL

August 22, 2019

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed Amendment to Commercial Division Rule 6 to Require Proportionally Spaced 12-Point Serif Type in Text and Footnotes in Papers Filed with the Court

=====

The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Commercial Division Advisory Council (the "Advisory Council"), to amend Commercial Division Rule 6 (22 NYCRR § 202.70(g), Rule 6) to require proportionally spaced 12-point serif type in text and footnotes in papers filed with the Court. The Advisory Council sets forth in a memorandum in support of this proposal (Exh. A) the virtues of requiring the use of proportionally spaced serif typeface: enhancement of readability, improvement in comprehension and retention in long passages of text, and improvement in a brief's appearance and legibility. The Advisory Council posits that adopting a mandatory typeface style may enhance efficiency for practitioners and the Court.

=====

Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than October 25, 2019.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

Memorandum

TO: Commercial Division Advisory Council
FROM: Subcommittee on Procedural Rules to Promote Efficient Case Resolution
DATE: June 5, 2019
RE: Proposal to Amend Commercial Division Rule 6 to Require Specific Typeface and Point Size in Papers Filed with the Commercial Division

This memorandum will consider whether Commercial Division Rule 6 should be amended to increase the point size of footnotes in briefs and affidavits from 10-point to 12-point typeface and to require use of a particular typeface for the main body of text.

Rule 6 of the Statewide Rules of the Commercial Division of the Supreme Court currently provides that “[a]ll papers submitted to the Commercial Division shall comply with CPLR 2101 and section 202.5(a)... and contain print no smaller than twelve-point... [and] print size of footnotes ... no smaller than ten-point.” Rule 6 is silent as to a particular style of typeface. CPLR 2102 and Section 202.5(a) of the Uniform Rules for the New York State Trial Courts are likewise silent about typeface. CPLR 2101 simply provides that typeface size shall be “no less than ten-point in size.”

For greater context, Local Civil Rule 11.1(b) for the U.S. District Court for Southern and Eastern Districts of New York requires all text to be 12-point type or larger, while permissibly indicating that footnotes *may be* in 10-point type. Both the U.S. District Courts for Northern and Western Districts of New York require all text, including footnotes, be a minimum of 12-point type. See Local Rule 10.1(a)(1) for U.S. District Court for Northern District of New York and Rule 10(a)(1) for the U.S. District Court for the Western District of New York. Meanwhile, Delaware's Court of Chancery, under Rule 171(4), requires that all briefs and memoranda, including footnotes, use Times New Roman 14-point typeface. Therefore, a mandate that requires the same 12-point typeface for both text and footnotes is uncommon among several key New York courts and is consistent with court practices in Delaware's Chancery Court.

Some studies have shown that larger point typeface and use of proportionally spaced serif typeface enhance readability, improve comprehension and retention of long passages of text. Serifed typefaces are those that have little extensions, or "serifs" at the ends of the strokes of the letters. Sans-serifs typefaces, like Arial, Verdana and Helvetica do not have the added stroke. Proportionally spaced typeface uses different widths for different characters, unlike monospaced typeface which uses the same width for each character. Apparently, serifs makes it easier for the eye to quickly and easily distinguish letters. Additionally, carefully chosen typeface can improve the quality of a brief's appearance and legibility. More importantly, larger point

type in footnotes and proportionally spaced serif typeface would assist the Commercial Division Justices and their staff in dealing with the arduous task of reading and retaining the content of tens of thousands of pages each year, which presumably would lead to greater efficiency.

Increasing point size of footnotes will have no impact on the length of briefs and affidavits because length, under Commercial Division Rule 17, is measured in words rather than pages. Because enlarging the typeface of footnotes can enhance the quality and readability of briefs and affidavits filed in the Commercial Division and may result in enhance efficiency for practitioners and the Court, this aspect of the proposed rule amendment should be implemented.

Adoption of a mandatory typeface style, however, should be limited to requiring proportionally spaced serif typeface because although studies show that proportionally spaced serif typeface improves readability, the benefits of one style of serif over another could not be established. Various styles of serif typeface exist and typeface styles are a matter of personal preference. For example, styles of proportionally spaced serif typeface include, Century Schoolbook, Georgia and Bookman. These are only a few, among many, which have been found easier to read. While amendment of Rule 6 to require use of proportionally spaced serif typeface appears warranted, this report will forgo recommending a mandate of a particular type serif typeface.

The Proposed Amendment

The proposed amendment to Rule 6 is as follows (deletions indicated by strikethrough; additions indicated by underline):

Form of Papers. All papers submitted to the Commercial Division shall ~~comply~~ not be inconsistent with CPLR 2101 and section 202.5(a). Papers shall be double-spaced and contain print no smaller than twelve-point, or 8½ x 11 inch paper, bearing margins no smaller than one inch. Unless otherwise directed by the Court or provided in the Court's individual rules, all text in briefs and affidavits, including footnotes, shall use proportionally spaced 12-point serif typeface ~~The print size of footnotes shall be no smaller than ten-point.~~ Papers also shall comply with Part 130 of the Rules of the Chief Administrator. Each electronically-submitted memorandum of law and, where appropriate, affidavit and affirmation shall include bookmarks providing a listing of the document's contents and facilitating easy navigation by the reader within the document.